

REMARKS/ARGUMENTS

Favorable reconsideration of this application, in view of the present amendment and in light of the following discussion, is respectfully requested.

Claims 1 and 3-15 are currently pending. The present amendment amends Claims 1, 3-7, 9, and 10; cancels Claim 2; and adds Claims 11-15. The amendments to the claims are supported by the originally filed specification, for example, at page 3, line 30, to page 4, line 3, and Figure 1, and do not add new matter. The new claims are supported by the originally filed specification, for example, at page 5, lines 7-27, and originally filed Claims 1-10, and do not add new matter.

In the outstanding Office Action, Claims 1 and 6-9 were rejected under 35 U.S.C. § 102(b) as anticipated by U.S. Patent No. 5,813,419 to Brams (herein “Brams”); Claims 1, 3, 6, and 9 were rejected under 35 U.S.C. § 102(b) as anticipated by U.S. Patent No. 5,799,669 to Briggs (herein “Briggs”); Claims 4 and 5 were rejected under 35 U.S.C. § 103(a) as unpatentable over Brams; and Claims 2, 4, and 5 were rejected under 35 U.S.C. § 103(a) as unpatentable over Briggs. Claim 10 was allowed. Applicants acknowledge with appreciation the allowance of Claim 10.

By the present amendment, Claim 1 is amended to incorporate the subject matter of Claim 2 and Claim 2 is canceled. Thus, it is respectfully submitted that the outstanding rejection of Claim 2 is moot.

Turning now to the rejection of Claims 1-9 under 35 U.S.C. § 102(b) and 35 U.S.C. § 103(a), Applicants respectfully traverse these rejections as discussed below.

Amended Claim 1 recites, in part, “the plurality of sheet openings are long in the width direction of the tube, extend over a length of at least 2/3 of a width of the sheet forming the first side, and are arranged at a pitch of 2 to 50 mm.”

Turning now to the cited references, Brams describes a hair curler. Specifically, Brams describes a hair curler that includes a sheet 1 which includes a rigid member 17 and a holding member 19, which can hold the hair curler in the folded position thereof according to the fold 9 by capturing the hair between the parts 3a and 3b and shaping them through the zigzag folds 13.<sup>1</sup> Brams also describes a plurality of perforations 7 in the sheet 3 for allowing for the hair to be treated with products and to dry.<sup>2</sup>

However, it is respectfully submitted that Brams does not teach or suggest that “the plurality of sheet openings are long in the width direction of the tube, extend over a length of at least 2/3 of a width of the sheet forming the first side, and are arranged at a pitch of 2 to 50 mm” as recited in Claim 1. In fact, the outstanding Office Action did not cite any portion of Brams as teaching or suggesting this feature.

Instead, Brams only shows **round** perforations 7, and not perforations 7 that are **long in the width direction** of the sheet 3 and **extend over a length of at least 2/3 of a width of the sheet**.<sup>3</sup> Additionally, Brams is silent as to any **pitch** of the arrangement of the perforations 7. Therefore, it is respectfully submitted that the perforations 7 described in Brams are not the “plurality of sheet openings,” as defined in amended Claim 1.

Thus, it is respectfully submitted that Brams fails to teach or suggest every element of amended Claim 1. Therefore, it is respectfully requested that the rejection of Claim 1, and Claims 6-9 which depend therefrom, as anticipated by Brams be withdrawn.

Claims 4 and 5 depend from Claim 1. As discussed above, it is respectfully submitted that Claim 1 is allowable. Therefore, as Claims 4 and 5 depend from Claim 1, in addition to containing additional features not taught or suggested by the cited references, it is respectfully requested that the rejection of Claims 4 and 5 as unpatentable over Brams be withdrawn.

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<sup>1</sup> See Brams, at column 3, lines 45-61, with corresponding Figure 1.

<sup>2</sup> See id., at column 3, lines 5-8 and 62-63, with corresponding Figure 1.

<sup>3</sup> See Brams, at Figures 1-3.

Turning now to Briggs, Briggs describes an apparatus and method for creating hair coloring designs. Specifically, Briggs describes an apparatus that includes a main body 10 which includes a base portion 20, a pattern portion 30 with at least one hole of a desired geometric shape cut therethrough 32, and an intermediate portion 40 with a laterally disposed slit 42 between the base portion 20 and the pattern portion 30.<sup>4</sup>

The outstanding Office Action conceded that Briggs does not disclose sheet openings having a pitch of 2 to 50 mm, but argued that “it would have been obvious to one having ordinary skill in the art at the time the invention was made to form the sheet openings with a pitch of 2 to 50 mm, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art.”<sup>5</sup>

However, it is respectfully submitted that such a conclusion can only be made if the reference identifies the variable in question as result-effective variable. It is well settled case law that optimization of a parameter is only routine if the prior art teaches that the varied parameter is a result-effective variable. See *In re Antonie*, 195 USPQ 6, 8-9 (CCPA 1977) and MPEP §2144.05. Only Applicants discovered the relationship between the pitch and the length of the sheet openings and an object of the present invention which is to provide a hair holder with which hair can be curled easily, securely, and orderly. Therefore, the plurality of sheet openings arranged at a pitch of 2 to 50 mm are not obvious in view of the cited art. Accordingly, the allegation that it would have been obvious to one having ordinary skill in the art at the time the invention was made to form the sheet openings with a pitch of 2 to 50 mm is unsupportable. Therefore, it is respectfully requested that the rejection of Claim 1, and Claims 3, 6, and 9 which depend therefrom, as anticipated by Briggs be withdrawn.

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<sup>4</sup> See Briggs, at column 3, line 58 to column 4, line 7, with corresponding Figure 1.

<sup>5</sup> See the outstanding Office Action, at page 3.

Claims 4 and 5 depend from Claim 1. As discussed above, it is respectfully submitted that Claim 1 is allowable. Therefore, as Claims 4 and 5 depend from Claim 1, in addition to reciting features that are not taught or suggested by the cited references, it is respectfully requested that the rejection of Claims 4 and 5 as unpatentable over Briggs be withdrawn.

New Claims 11-14 recite a method of curling hair incorporating the hair holder as claimed in Claim 1, which Applicants respectfully submit are allowable. New Claim 15 recites a method of curling hair incorporating the hair holder as claimed in 10, which Applicants respectfully submits is allowable. New Claims 11-15 are supported at least by the originally filed specification, for example, at page 5, lines 7-27, and by originally filed Claims 1 and 10, and do not add new matter. Therefore, Applicants respectfully submit that Claims 11-15 are allowable.

Consequently, in view of the present amendment, no further issues are believed to be outstanding in the present application, and the present application is believed to be in condition for formal allowance. A Notice of Allowance is earnestly solicited.

Should the Examiner deem that any further action is necessary to place this application in even better form for allowance, the Examiner is encouraged to contact Applicants' undersigned representative at the below listed telephone number.

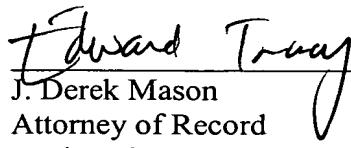
Respectfully submitted,

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